IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5581 of 1987

with

SPECIAL CIVIL APPLICATION No 7636 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A R SINGH

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

MR TR MISHRA for Petitioner in both petitions.

Mr. R.C.Kodekar, AGP for Respondent Nos. 1 and 2.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 09/10/2002

CAV JUDGEMENT

Both these petitions have been filed by one and the same petitioner in respect of his service. The first petition being Special Civil Application no. 5581 of 1987 has been filed seeking a direction in the nature of mandamus directing the respondents to forthwith consider the case of the petitioner for promotion to the post of Police Inspector by giving him seniority and all other consequential benefits following therefrom. Subsequently, by an amendment, the petitioner has prayed to declare that the petitioner is entitled to be promoted as Police Inspector from 10.10.1987 and issue a direction to grant deemed date of promotion from the aforesaid date and for quashing and setting aside the order dated 10th Apri, 2000, being malafide and without any basis. While in the petition being Special Civil Application No. 7636 of 1996, the petitioner has prayed for a declaration that the respondents are not competent to conduct an inquiry on the allegations of 1977 and the inquiry being conducted on the basis of the charges of the incident of the year 1977, as arbitrary illegal and violative of Articles 14 and 16 of the Constitution of India.

2. In Special Civil Application No. 7637 of 1996, it is asserted by the petitioner that the District Superintendent of Police, Banaskantha at Palanpur issued a charge-sheet to the petitioner vide letter dated 20.6.1983 in connection with the incident which had taken place on 8.12.1977. On inquiry having been conducted against the petitioner, the petitioner was issued an order dated 23rd July, 1988 whereby the petitioner was dismissed from service by the Deputy Inspector General of Police on the ground that it was not feasible to conduct the inquiry and all the charges levelled against him were deemed to have been proved. The petitioner challenged the said order by filing a separate writ petition in this Court. Before passing any order by this Court in the petition, the Government suo motu revoked the dismissal order passed against the petitioner and he was reinstated in service vide order dated 6.9.1990. It is also stated that a preliminary inquiry was conducted against the petitioner on the basis of the charge-sheet dated 19.3.1978 and a report was submitted by the Police Superintendent, addressed to the Police Commissioner vide communication dated 19th May, 1978. The Police Commissioner passd the following order:

> "May kindly see and decide whether it is a fit case to take disciplinary action against PSI Singh."

Thereafter, the petitioner was interviewed by the

Additional Commissioner of Police, Shri Jashpalsingh and gave an oral warning to the petitioner that no such incident should take place in future and the preliminary report was wound up by the order of Mr. Jashpalsingh. Lateron, departmental proceedings were initiated against the petitioner on the basis of that report dated 19th May, 1978 and the departmental proceedings were again started on 3rd October, 1996 and it was again fixed on 7.10.1996. The petitioner therefore, being aggrieved by the decision for restarting the departmental inquiry, approached this Court. He also made a representation in the month of July, 1995 claiming benefits, perks and perquisites available for police officers as available to CRPF and that gave a cause for opening an inquiry with malafide intention and against statutory provisions of Bombay Civil Service (Conduct, Discipline and Appeal) Rules. Rule 2(a) of the said Rules says that whenever a default is reported and a preliminary inquiry is necessary, before a definite charge can be framed, it should be done on the spot and that should be carried out by the Superintendent of Police in case of Inspectors and by the Inspector in case of Sub-Inspector, Jamadars, head constables and police constables in Greater Bombay(Ahmedabad), but in district by a Senior Divisional Police Officer in case of police Inspectors and Police Sub-Inspectors and to that effect, certain circulars were issued. As such, the District Superintendent of Police, Banaskantha was not competent to issue the charge-sheet.

3. In this respect, an affidavit-in-reply has been filed on behalf of the respondent no.1 State of Gujarat stating therein that the petitioner was charge-sheeted for the alleged acts and ommissions vide charge-sheet dated 20th June, 1983. The competent authority appointed Presiding Officer for conducting a departmental inquiry vide order dated 17th May, 1984. After conclusion of the departmental proceedings, the petitioner was removed from the service and on account of dismissal, all the other departmental proceedings were kept dormant on account of punishment awarded. The Director General of Police and Inspector General of Police has power to review his orders under section 27 of the Bombay Police Act, 1951. As such, the punishment of the petitioner was reviewed vide order dated 4.10.1985 and the punishment was reduced from the removal to warning and the petitioner was reinstated by the competent authority vide order dated 14.8.1986. The petitioner was dismissed from service by the Deputy Inspector General of Police, Vadodara range vide order dated 7.1.1988, but that order was revoked by the Government of Gujarat in Home Department only on

humanitarian ground vide order dated 6.9.1990 and the petitioner was reinstated in service. The petitioner is facing serious charges of misbehaviour and gross misconduct as a member of disciplinary police force. If proved, he will be liable for a major punishment. In June, 1988, two Government witneses were examined in presence of the petitioner and after reinstatement of the petitioner, more witnesses have to be examined on 7th October, 1996 and 14th October, 1996. As such, this petition is not maintainable in the eye of law.

4. I have carefully considered the contentions of the learned advocates for the rival parties and perused relevant record in respect of this petition. It appears that once the petitioner was charge-sheeted in respect of the incident of 1977 and he was removed from service and that punishment was reviewed by the comptent authority and that punishment of removal was reduced from the removal to warning. It cannot be said that the departmental proceedings were kept dormant on account of punishment awarded. As such, on the basis of the order reducing the punishment of removal to warning, other departmental proceedings in respect of the same cause of action cannot be kept pending and he cannot be tried again for the same cause of action.

5. So far as the second order of dismissal dated 7.1.1988 is concerned, that order was also revoked and the petitioner was reinstated in service. The proceedings in respect of the same cause of action cannot remain pending. As such, the authority was not legally competent to conduct the inquiry in respect of the allegations of the incident of the year 1977. Once the matter has already been decided and concluded and the punishment has been reduced to warning, removal or dismissal has been revoked, and the petitioner was reinstated in service without any condition, then it is not proper on the part of the disciplinary authority to keep the proceedings pending in respect of the same cause of action in which the punishment of dismissal was awarded and which punishment was either reduced to warning or to pass an order of dismissal or removal lateron and that order was also revoked.

6. In view of the above clear cut position and discussion, and the facts and circumstances, this petition deserves to be allowed and it is held that the respondent authority was not competent to keep the proceedings pending in respect of the incident of 1977 and to proceed again or for passing any punishment against the petitioner when the punishment of dismissal

against the petitioner was reduced to only warning.

7. In the second petition being Special Civil Application No. 5581 of 1987, the petitioner has sought for a direction to the respondent to forthwith consider the case of the petitioner for promotion to the post of Police Inspector by giving him seniority with all consequential benefits. He has also made an amendment by which it is sought to declare that the petitioner is entitled to be promoted as Police Inspector from 10.101987 and to grant him deemed date of promotion from the aforesaid date and further to quash and set aside the order dated 10.4.2000 being malafide and without any basis.

8. It is stated that the petitioner joined the service as Police Sub Inspector in the police department in the month of July, 1968. In the year 1979, he became the President of Gujarat Police Association and made several demands on behalf of the association, as a result, several complications arose in the service career of the petitioner since 1979. The petitioner himself organised the association of the members of the police force in the State of Gujarat and the police force went on strike. Hence, the petitioner was the victim as being the main person in legitimate strike. As the petitioner was organising the police association activities in the State of Gujarat, the petitioner was dismissed from service by the order dated 17.12.1979 by the Government of Gujarat without giving any reasonable opportunity of being heard to the petitioner or any inquiry in the matter. Therefore, the petitioner challenged that order by filing a writ petition being Special Civil Application No. 3624 of 1979. This Court allowed the said petition and quashed and set aside the order passed by the Government. Being aggrieved by the said order, the Government went in appeal by filing LPA No. 34 of 1980 which is still pending in this Court, but the order of the learned Single Judge was not stayed and so the petitioner was reinstated in service. An other order of dismissal was passed on 4.10.1985 with effect from 2.4.1986 on the imputation that the petitioner had wrongfully arrested one person in Banaskantha. The petitioner again challenged that order by filing another writ petition being Special Civil Application No. 5542 of 1985. This Court, initially stayed the operation of the order, but lateron the stay order was vacated in February, 1986. Therefore, the petitioner was dismissed from 2.4.1986. The petitioner resorted to a hunger strike from 2.8.86 to 8.8.86 to invite the attention of the Government. As a

result of the hunger strike, the respondents revoked the order of dismissal and the petitioner was reinstated in service. As the order of dismissal was revoked, the petitioner was advised to withdraw the petition already filed and and hence that petition being Special Civil Application no. 5542 of 1985 was withdrawn, but the respondent did not pay salary to the petitioner for intervening period of about five months with malafide intention. The respondents with a view to see that the petitioner should not get the promotion, initiated five inquiries on flimsy grounds, but none of the inquiries were in respect of the corruption or any other serious misconduct and they were pending only in respect of the disobedience of the order of the superior officers and those five inquiries were initiated only after hunger strike was made by the petitioner. It is also stated that the respondents initiated 17 inquiries against the petitioner out of which five are said to be pending and out of 12 inquiries in 10 inquiries, the petitioner has been exonerated and only in two inquiries, punishment was inflicted and that was stoppage of increment in the year 1978 and in another inquiry, two increments of the petitionen were also reduced in the year 1986. The petitioner filed appeals and those appeals are still pending against the said punishment with the Government. The petitioner again resorted to a hunger strike from 2.2.87 to 8.2.1987 for a complaint of pending inquiries and promoting the petitioner to the next higher grade i.e. Police Inspector. But the respondents have not done anything and those inquiries are kept pending solely with a view to see that the petitioner is deprived of promotion to the higher post. The petitioner was served with two adverse remarks, one is dated 25th July, 1978 which was served on the petitioner on 1.8.1978. This was in respect of the year 1977. The adverse remark against the petitioner was that he is a hasty officer and by his decision, he puts himself into trouble. Those remarks were communicated very late. Therefore, in view of the judgment of this Court in case of Dr. Kulkarni, the CR cannot be considered. Another adverse remark was communicated to him on 1.8.1984 for the period from April, 1983 to March, 1984 and those entries are also not sustainable in view of the aforesaid judgment of this Court. In respect of the second adverse remark communicated in the year 1984, the petitioner made a representation to the authorities, but the said representation has not been decided so far. The respondents have considered certain Police Sub Inspectors for promotion to the post of Police Inspector, through the departmental promotion committee held in its meeting in the month of July, 1985 consisting the members i.e.

Director General of Police, Director, ACB and Deputy Secretary, Home Department. By an order dated 10.10.1987, the results were declared and about 24 Sub Police Inspectors were promoted as Police Inspectors including seven persons who were junior to the petitioner, ignoring the promotion of the petitioner and it was stated that the promotion was made on the basis of the seniority cum merit. The promotion of the juniors is illegal and violative of Articles 14 and 16 of the Constitution of India. Several officers in the Police Department who were facing inquiries even for more serious misconduct, than the petitioner have been promoted to the next higher grade. During the pendency of the present petition, this Court passed an order dated 11.9.1998 directing the respondents to consider the case of the petitioner and decide the same within six weeks from the date of receipt of the representation. Pursuant to the orders of this Court, the petitioner submitted a representation and an order was passed on 10.11.1998 by the Director General of Police granting promotion on ad hoc basis to the petitioner. The petitioner is entitled to be promoted as Police Inspector with retrospective effect from the date when his juniors were promoted on regular basis nor on ad hoc basis. Hence, the petitioner is entitled for the promotion with effect from 10.10.1987, though the petitioner was granted ad hoc promotion in the year 1998, on ad hoc basis which is totally illegal. So far as the condition laid down in the order dated 10.11.1998 is concerned, the petitioner has not been issued any charge-sheet in respect of item nos. 1,2 and 3 regarding allegations at item no. 4. At the relevant time, anti corruption branch as conducted preliminary inquiry in the aforesaid matter and submitted its report to the Director General of Anti corruption department and Additional Director General of Police, CID crime has filed papers in the year 1995-96. No such inquiry is pending. It appears that the charge at item no. 4 has been mentioned due to oversight. After second dismissal order was withdrawn by the Government, the petitioner was resinstated on 14.8.1996. Since then, the petitioner is working and the petitioner has received several meritorious awards. In the year 1998-99, after the order was passed by this Court to consider the case of the petitioner for deemed date of promotion, the respondents vide order dated 10.4.2000 rejected the case of the petitioner on flimsy grounds. While granting ad hoc promotion as per the order, wehrein it is mentioned that four charges are pending against him. So far as the charge nos. 1, 2 and 3 are concerned, no charge-sheet has been issued while in respect of charge no. 4 regarding the incident of 1977, preliminary inquiry was

conducted by ACB and the charges have been not proved as back as in the year 1994-95. Therefore, this petition.

9. Affidavit-in-reply has been filed on behalf of th respondents stating therein that this petition is not maintainable in the eye of law as no legal or fundamental rights guaranteed to the petitioner have been violated by the respondents. The petitioner has filed this petition for promotion to the post of Police Inspector with due seniority and consequential benefits. The promotion from the post of Sub Inspector of Police to the post of Police Inspector is given on the basis of proved merits and efficiency as per the provisions of Gujarat Police Manual and Recruitment Rules framed for the purpose of appointment to the post of Police Inspector. Rule 53 of Gujarat Police Manual envisages that seniority or seniority cum merit is not the criteria for promotion to the post of Police Inspector, but proved merit and efficiency is the basis on which the promotion is made to the post of Police Inspector. The case of the petitioner was duly considered for promotion by the selection board and he was not found meritorious enough to be included in the select list. Therefore, he was superseded. The service record of the petitioner is also not found good. Once, he was dismissed from service and subsequently, the Government had shown sympathy towards the petitioner, and he was taken back in service. Moreover, several punishments have been inflicted upon the petitioner. Adverse remarks have been communicated to the petitioner on several occasions. All relevant factors were consideredby the selction board. As such, the petitioner is not entitled to any of the prayers made in the petition and the petition deserves to be dismissed. It is denied that any of the actions of the respondents with regard to not giving promotion to the petitioner or otherwise is illegal, arbitrary or malafide. The persons junior to the petitioner were found meritorious enough to be promoted and so the petitioner was superseded. The malafide intention in not promoting the petitioner is also denied. The case of the petitioner was duly considered for his promotion, but he was not found meritorious for promotion, hence he was superseded. The selection board consisting of the respondent no.1 Director, ACB and Deputy Secretary, Home Department had duly considered the case of the petitioner and the petitioner was not found meritorious for promotion. The petitioner was appointed as Sub Inspector of Police in the year 1968. The service record of the petitioner was not good at the relevant time and, therefore, the selection board did not think it proper to include the

petitioner in the select list prepared for giving promotion to the eligible candidates. Non-promotion of the petitioner and his union activities have no relevance to the selection for the promotion to the higher grade of the petitioner. The respondent authorities or members of the selection board had no grudge, bias or ill-will against the petitioner on account of his union activities or otherwise. His case was duly considered on merits, but he was not found meritorious enough to be promoted and hence he was superseded. Departmental inquiries were initiated against the petitioner and the petitioner was punished on several occasions. The petitioner was dismissed once from service, but by showing grace, the petitioner and other similarly situated persons were reinstated in service. The petitioner used to behave in an undisciplined manner which would not be befitting to an officer of a disciplined force. Two major and six minor punishments were inflicted upon the petitioner. He had disobeyed the directions given by his superior officer and committed misconduct. It is true that the petitioner was dismissed from service and the order of dismissal was challenged by the petitioner in this Court and this Court allowed the petition. Against that order, an LPA has been filed by the Government authorities and the said appeal appears to be pending at present. The petitioner was dismissed from service and he challenged the said order before this Court. The petitioner had proceeded on a hunger strike which did not befit to a member of a disciplined force. It is denied that on account of the hunger strike, the order of punishment was revoked by the Government authorities. The petitioner made an appeal against the order of dismissal to the respondent no. 2 and after due deliberation and careful consideration, by a speaking order, the respondent no. 2 had set aside the order of dismissal and it was observed therein that eventhough the petitioner had misconducted, a lenient view was taken by the Government reinstating him in services as per the order passed by the Government dated 6.10.1986. The petitioner's absence from 2nd April, 1986 to 13th August, 1986 was treated as leave without pay. Therefore, the petitioner had no right to get the salary for that period. In all, four inquiries were conducted against the petitioner due to his gross misconduct and indiscipline and it is not expected from a member of a disciplined force to behave in an undisciplined manner. The petitioner was awarded two major and six minor punishments. After filing the petition, the petitioner was dismissed from service, but he was taken back in service as the Government authorities had shown grace to the petitioner. The petitioner was communicated adverse remarks for the

following years, i.e. 1969, 1972, 1973, 1974, 1975, 1977, 1978, 1983 and 1984. Those adverse remarks related to the period prior to the filing of the present petition and the petitioner has not given the complete facts. Hence, this petition is liable to be dismissed. The petitioner had been once again dismissed from service and thereafter, he was reinstated in service. It was denied that adverse remarks were communicated to the petitioner after undue delay. They were communicated in due time. No representation against adverse remarks for the year 1983-84 has been received from the petitioner and those remarks have become final. The case of the petitioner was duly considered for his promotion, but he was not found meritorious and, therefore, he was superseded. It is also stated that the petitioner will be given promotion as and when he will deserve it. The selection board considers cases of all Sub Inspectors of Police who are within the zone of consideration and from the said list, those who were meritorious were included in the select list and selected persons were given promotion as and when vacancies arose in the cadre of Police Inspector. The petitioner was not found meritorious and so he was not given promotion. For promotion to the post of Police Inspector, proved merits and efficiency is required and not seniority or seniority cum merit. Pendency of inquiry or otherwise is not a very relevant factor especially when the basis for promotion is proved merits and efficiency. The absence of departmental proceedings or awards for performance on particular occasions would not mean that the concerned person is very good and he should be promoted especially when the basis for promotion is proved merit and efficiency. The averments made by the petitioner are vague and are not sustainable in the eye of law. Special Civil Application NO. 1407 of 1983 has been disposed of holding that the criterion for promotion to the post of Police Inspector is proved merits and efficiency as specified in Gujarat Police Manual and Recruitment Rules for the appointment to the said post.

11. Re-joinder affidavit has also been filed by the petitioner and two further affidavits have also been filed by the petitioner stating that S.J.Atit, V.J.Desai and V.M.Vyas senior to the petitioner in the rank of Police Sub Inspector have been granted promotion, but he was ignored. When S.J.Atit was promoted from Sub Inspector to Police Inspector, though in respect of several charges, departmental inquiries were also pending against him. In the similar manner, V.J.Desai was promoted upto the level of Deputy Superintendent of

Police, eventhough several departmental inquiries were pending against him. V.M.Vyas had also a very bad record of service and the charge of moral turpitude was also against him and various inquiries were pending against him. Still however, he was promoted from Sub Inspector to Police Inspector during the pendency of departmental inquiries. V.R.Griglani when he was promoted to the post of Police Inspector, several inquiries were pending against him and several reprimands and warnings were issued against him. D.A.Rathod and N.B.Thakkar were also promoted against whom there was a charge of embezzlement and departmental inquiries were pending against them. One D.K.Dhagal, I.P.S., who was working as District Superintendent of Police was promoted to Deputy Inspector General of Police eventhough departmental proceedings were pending against him at the time of his promotion. Shri S.S.Chauhan, PI was promoted as Deputy Superintendent of Police though departmetnal proceedings were pending against him and involved in criminal case for the offence under section 307 of Indian Penal Code and he was promoted to the next higher grade. M.S.Patel, Police Inspector was promoted as Deputy Superintendent of Police. He was also involved in a murder case of Amraiwadi police station. J.C.Patel, Dy.S.P. was promoted as D.S.P. At that time, departmental inquiries were pending against him. Pursuant to the order of this Court dated 24.3.2000, the respondents passed an order denying the benefit of deemed date of promotion. The petitioner has filed a representation justifying his deemed date of promotion.

12. Heard the learned counsel for the parties at length. The contention of the learned counsel for the petitioner is that the petitioner received several awards for outstanding performance as Police Sub Inspector. The Government of Gujarat, Additional Director General of Police issued an order dated 9.1.1996 giving award of Rs. 4000/- to the petitioner for detecting and arresting a person involved in the business of brown sugar. The Government of Gujarat, Home Department issued an office order dated 13th August, 1997 giving an award of Rs. 2000/- for outstanding performance in the matter of arrest of an individual involved in the business of brown sugar. Similar award was also granted to the petitioner by the Additional Director General of Police of Rs. 1000/- vide order dated 20th August, 1996. Another award of Rs.150/- with appreciation certificate was issued by the Additional Director General of Police on 5.12.1996 for outstanding performance, sincerity and devotion to the duty. A commendatory note was also received by the petitioner on 5.11.1996. Another commendatory note was

issued to the petitioner on 5.11.1996 and a commendatory note was also given to the petitioner. Another certificate of appreciation was issued by the Additional Director General of Police on 6.5.1997 and an order dated 23.4.1997 was also received by the petitioner from the Additional Director General of Police for an outstanding performance and an amount of Rs.100/- by way of an award. An appreciation certificate was issued on 2nd May, 1997 for outstanding performance during the training period. The petitioner also received a cash award of Rs. 100/vide order dated 6.8.1997. He also received an award of Rs. 75000/- for outstanding performance vide order dated 16.9.1997. On the same day, he also received an award of Rs. 100/- and appreciation certificate for outstanding performance. He also received a certificate dated 16.9.1997 with award of Rs.250/-. On 10.3.1997, another award of Rs. 35/- and appreciation certificate was issued to the petitioner. He also received an amount of Rs.50/by way of award with appreciation note for making excellent arrangement during the visit of the Prime Minister of India. He also received an award of Rs.100/- with appreciation note dated 27th March,1 997. He also received award of Rs.100/- with appreciation note in respect of the visit of the Prime Minister on 7.12.1996. He received an amount of Rs.50/- as award with appreciation certificate vide order dated 27th February, 1994 for excellent performance. He also received an amount of Rs.20/- as award with appreciation note vide order dated 10.11.1987 for outstanding performance. Another award of Rs.20/- with appreciation certificate was given to the petitioner vide order dated 18.11.1997. Another award of Rs. 25/- with appreciation certificate was given to the petitioner on the same day vide order dated 18.11.1997. Another award of Rs.25/with appreciation certificate was given to the petitioner on the same day. The Project Manager, Gujarat Mineral Development Corporation issued an appreciation letter dated 15.10.1992. The Government of Gujarat awarded Rs.4000/- for life risk and excellent performance of duty vide order dated 14.8.1996. The Deputy Secretary, Home Department also gave an award of Rs.1000/- vide letter dated 14.1.1998.

13. Thus, the petitioner's performance was highly appreciated by the department as outstanding and he was given various appreciation notes, certificates and awards etc. at different times. The petitioner was appointed in the year 1968 Sub Inspector. As he was elected as the President of Police Association and he took the cause of members of the force, he was dismissed from service on 17.12.1979 without giving an opportunity

of being heard and arbitrarily. Hence, he had to file Special Civil Application no. 3624 of 1979 in this Court which was allowed and the dismissal order was set aside by this Court. The LPA preferred against the judgment of the learned Single Judge by the respondent authorities has also been rejected subsequently. On 4.10.1985, the petitioner was again dismissed with effect from 2.4.1986. The petitioner had therefore, to file a writ petition being Special Civil Application no.5542 of 1985 in this Court. Initially, ad-interim relief was granted by this Court, but subsequently, that was vacated. The petitioner had then resorted to a hunger strike from 2.8.1986 to 8.8.1986, and so the department had to revoke the order of dismissal with effect from 14.8.1986. The case of the petitioner has not been considered for promotion admittedly by the Departmental Promotion Committee from 1989 to 1997 which is illegal, arbitrary and discriminatory in view of the fact that several other persons including juniors to the petitioenrs who were facing serious charges of misconduct, have been considered for promotion and they were promoted. But the petitioner's case was not considered by the DPC as he had taken up the cause of the police force. In the month of April, 1987, the DPC found the petitioner unfit and unsatisfactory record. In April, 1988, again the DPC met and found the petitioner not fit and poor record. Int he year 1997, the petitioner was not found fit for promotion. Though the petitioner had been granted various commendations and awards with appreciation letters and cash awards and appreciation notes for outstanding performance, the case of the petitioner has not been considered for promotion from 1995 to 1997. Though the petitioner was granted higher grade pay scale vide order dated 19.7.1999 with effect from1.4.1996, after perusing the record of last five years, still however, he has not been given the promotion nor his case has been properly considered by the department concerned.

14. On the other hand, the learned Assistant Government Pleader contended that the petitioner has no legal or fundamental right nor any of his fundamental rights has been violated by the department. As such, this petition is not maintainable in the eye of law. The promotion for the post of Police Inspector from the post of PSI is given only on the basis of proved merits and efficiency as per the provisions of Gujarat Police Manual and Recruitment Rules framed for the purpose of appointment to the post of Police Inspectors. Rule 53 of the Gujarat Police Manual says that seniority or seniority cum merit is not the crietria for promotion to the post of Police Inspector, but proved merits and

efficiency is required, on the basis of which promotion isgranted to the post of Police Inspector. The petitioner was dismissed from service but, subsequently, the Government had taken him in service out of sympathy and grace. Several punishments have been inflicted upon the petitioner and adverse remarks have also been communicated to the petitioner on several occasions. The adverse remarks were in respect of the years 1969, 1972, 1973, 1974, 1975, 1977, 1978, 1983 and 1984 were communicated to the petitioner within prescribed time limit. The adverse remarks for the year 1983-84 have been received by the petitioner and those adverse remarks have become final as they were not challenged effectivelyby the petitioner. Most of the adverse remarks have been given to the petitioner in respect of disobedience of the superior officers' order. As per the order of this Court dated 11.9.1998, rendered in Special Civil Application no. 5581 of 1987, the D.P.C. considered the cse of the petitioner for promotion and the petitioner has been given ad hoc promotion conditioally on 10.11.1998 under GAD resolution dated 2.4.1983 subject to the findings in four pending departmental inquiries and that will be binding upon him and the DPC has continued the ad hoc promotion with a finding "fit to be granted ad hoc promotion.".

15. I have carefully considered the contentions of the learned counsel for the parties. It appears that the petitioner was awarded adverse remarks not only after 1979, but he was also awarded adverse remarks much prior to 1979, from 1969, 1972, 1973, 1974, 1975, 1977 and 1978 and he was dismissed from service in the year 1979. However, pursuant to the High Court's order, the petitioner was reinstated in service. Though, an LPA was filed against the said order, no interim relief was granted in that LPA. It is stated at the Bar that the said LPA has been rejected. The petitioner was again dismissed vide order dated 4.10.1985 with effect from 2.4.1986 and he resorted to a hunger strike from 2.8.1986 to 8.8.1986. The department therefore, sympathetically, and with grace revoked the dismissal order of the petitioner with effect from 2.4.1986. It appears that the petitioner was not found fit by the DPC for promotion in the years 1980, 1987 and 1988. In the year 1995, the DPC found the petitioner unfit for promotion. Though the result of the petitioner regarding promotion was kept under sealed cover in February, 1987, but subsequently the petitioner was not found fit for promotion as it appears from the order dated 19.7.1999. The petitioner has already been promoted and the petitioner has been given ad hoc promotion conditionally

on10.11.1998. In the month of May, 1999, the DPC has continued the ad hoc promotion of the petitioner with a finding "fit to be granted ad hoc promotion." During the course of arguments, it was pointed out by the learned AGP that two inquiries are still pending against the petitioner, therefore, there is no question of considering the case of the petitioner for regular promotion. The learned counsel for the petitioner submitted that no inquiry is pending against the petitioner and no charge-sheet has been filed against the petitioner for any departmental inquiries, purported to be pending against him. This Court directed the learned AGP to inform the exact position as to whether any departmental inquiry is pending against the petitioner as stated in the order dated 10.4.2000. The learned AGP, after receiving instructions from the department concerned, lateron informed the Court that no inquiry is pending against the petitioner. As such, if no inquiry is pending against the petitioner and the petitioner has been found fit for ad hoc promotion from 10.11.1998 and in the month of May, 1999, the DPC found the petitioner fit to be granted ad hoc promotion subject to the decision of four departmental inquiries pending against him. As per the statement made by the learned AGP, no inquiry is pending as on today against the petitioner. Therefore, it would be in the fitness of things that the respondents should consider the petitioner's case for regular promotion with effect from 10.11.1998 for passing, though the past career of the petitioner from 1979 to 1997 involves various adverse remarks regarding disobedience of the superior officers' orders and the hunge strike resorted by the petitioner cannot be considered to be proper redressal of the grievance for a person in the police force which is considered to be a disciplined force. Leaving aside all the incidents and the material against him, regarding adverse remarks etc., the DPC has considered in May, 1999 the case of the petitioner for promotion and the petitioner was found fit to be granted ad hoc promotion which does not appear to be interfered with by the department in view of the fact that no departmental inquiry is pending against him.

16. So far as the case of other persons that juniors to the petitioner and other officers who were involved in serious charges of misconduct and departmental inquiries were pending against them, eventhen their cases were considered for promotion and they were promoted to the higher grade is concerned, there is no material on record before this Court to support this argument. Whether the petitioner is also entitled to be treated at par with those persons who had

been promoted and against whom, inquiries regarding misconduct were pending, there is nothing on record to show under which circumstances the case of other persons for promotion were considered. So, at this stage, in the absence of sufficient material on record, it cannot be said that the petitioner has been discriminated against those persons who have been promoted against whom inquiries were pending and the petitioner's case was not considered.

17. In the facts and circumstances of the case and in view of the above discussion, this petition is partly allowed. The respondents are directed to treat the petitioner to have been regularly promoted with effect from 10.11.1998 in the rank of Police Inspector. Writ petition being Special Civil Application No. 7636 of 1996 is allowed and proceedings of the departmental inquiry in respect of the incident of 1977 are hereby quashed. Rule in both the petitions made absolute to the extent above accordingly with no order as to costs.

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***darji